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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,249	08/02/2006	David G. Lenahan	10FY-120754	6429
30764 7590 03/17/2008 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP 333 SOUTH HOPE STREET 48TH FLOOR LOS ANGELES, CA 90071-1448				
EXAMINER JACKSON, DANIELLE				
ART UNIT		PAPER NUMBER		
3636				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/588,249

**Applicant(s)**

LENAHAN, DAVID G.

**Examiner**

DANIELLE N. JACKSON

**Art Unit**

3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 August 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date 1/9/07
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Drawings***

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "210", "300" and "400", etc. have been used to designate the canopy. Reference characters assigned to the same parts must be consistent in each figure, meaning each figure cannot have a different number for the same part. The reference characters listed above are an example of a problem that occurs throughout all of the drawings and specification. The other instances have not been listed but must be corrected as well in order for the drawings to be in proper form. Any changes made to the drawings should also be reflected in the specification.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as

either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

3. The disclosure is objected to because of the following informalities: page 11, line 13 – "the canopy leading edge 340" should be changed to --the proper edge 340-- so as to be consistent with the reference label previously assigned to character 340.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 14 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 14 and 15 recites the limitation "the fixed support mechanism" in the first line. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-10 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Kida (US-4,474,201).

Kida discloses a canopy comprising: a single pliable cloth cover (35) having an asymmetrical positioned vertex point (2) from which the cover projects with unequal extensions (FIG. 4), wherein at the asymmetrical positioned vertex point (the point where the support ribs meet), the canopy is rotatable around a fixed longitudinal axis (the axis being the axis of the shaft 1) relative to the ground to provide an adjustable coverage zone within a desired stationary area at a time of day when rotated from a first canopy position to a second canopy position at an elevated level relative to the ground. Further regarding claim 13, Kida discloses a fixed support mechanism (1) for positioning the canopy relative to the elevated level.

Kida teaches support ribs that traverse the cover, wherein some of the support ribs have a fixed length (3) and some of the support ribs have a variable length (18) where they are adjusted by an extendible member (FIG. 1(a)).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kida (US-4,474,201) alone.

Kida is discussed above but is silent on the asymmetry ratio of the unequal extensions, however it would have been obvious to one of ordinary skill in the art to modify Kida to provide a canopy with a ratio in a range between 1.5:1 and 2.3:1 measured horizontally in plan view. Every asymmetrical umbrella has a ratio of extended ribs to fixed ribs and the particular ratio would have been an obvious matter of design choice within the skill of the art because the particular ratio presents no novel or unexpected result.

7. Claims 12, 14, 16-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kida (US-4,474,201) as applied to claim 1 above, and further in view of Henderson (US-2,671,459).

Claims 12 and 26: Kida is discussed above but lacks the longitudinal axis being a tilted longitudinal axis. Henderson shows an umbrella having a cover (B) extending from a longitudinal axis defined by the support pole (C), wherein the longitudinal axis can be tilted (FIG. 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Kida to include a tilted longitudinal axis, as suggested by Henderson, so that the umbrella could provide an even wider coverage zone.

Claims 14 and 16-24: Kida discloses a canopy comprising: a single pliable cloth cover (35) having an asymmetrical positioned vertex point (2) from which the cover projects with unequal extensions (FIG. 4), wherein at the asymmetrical

positioned vertex point (the point where the support ribs meet), the canopy is rotatable around a fixed longitudinal axis (the axis being the axis of the shaft 1) relative to the ground to provide an adjustable coverage zone within a desired stationary area at a time of day when rotated from a first canopy position to a second canopy position at an elevated level relative to the ground. Further regarding claim 13, Kida discloses a fixed support mechanism (1) for positioning the canopy relative to the elevated level.

Kida teaches support ribs that traverse the cover, wherein some of the support ribs have a fixed length (3) and some of the support ribs have a variable length (18) where they are adjusted by an extendible member (FIG. 1(a)).

Claim 25: Kida is discussed above but is silent on the asymmetry ratio of the unequal extensions, however it would have been obvious to one of ordinary skill in the art to modify the combination of Kida and Henderson to provide a canopy with a ratio in a range between 1.5:1 and 2.3:1 measured horizontally in plan view. Every asymmetrical umbrella has a ratio of extended ribs to fixed ribs and the particular ratio would have been an obvious matter of design choice within the skill of the art because the particular ratio presents no novel or unexpected result.

8. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kida (US-4,474,201) in view of Henderson (US-2,671,459) as applied to claim 12 above, and further in view of Ma (US-2002/0129847 A1).

The combination of Kida and Henderson is discussed above but lacks the support mechanism comprising a cantilevered support at the vertex point by a projection from above the canopy. Ma shows a canopy having a canopy (15) that is supported by a projection (16) located above the canopy that is attached to a cantilevered support (12). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Kida and Henderson to include a cantilevered support mechanism that attaches to a point above the canopy, as suggested by Ma, so there will not be an undesired support mechanism under the canopy.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIELLE N. JACKSON whose telephone number is (571)272-2268. The examiner can normally be reached on Monday through Friday 8:30am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Dunn can be reached on (571) 272-6670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. N. J./  
Examiner, Art Unit 3636

/David Dunn/  
Supervisory Patent Examiner, Art Unit 3636